

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARIA D. WATERS and U.S. POSTAL SERVICE,
POST OFFICE, Tampa, FL

*Docket No. 03-1131; Submitted on the Record;
Issued August 4, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, COLLEEN DUFFY KIKO,
DAVID S. GERSON

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

This is the second time this case has been before the Board. On March 1, 2001 appellant, a 54-year-old letter carrier, filed a claim for benefits based on an emotional condition. By decision dated May 22, 2001, the Office denied the claim, finding that appellant had not substantiated compensable work factors as contributing to an emotional condition. In a decision dated August 31, 2001, the Office determined that appellant's request for reconsideration was not sufficient to warrant merit review of the claim. In a decision dated June 4, 2002,¹ the Board affirmed the May 22 and August 31, 2001 Office decisions. The history of the case is provided in the Board's prior decision and is incorporated herein by reference.

By letter dated October 16, 2002, appellant's attorney requested reconsideration. Appellant submitted reports dated August 6 and October 11, 2002 from Dr. Walter E. Afield, Board-certified in psychiatry and neurology and appellant's treating psychiatrist. Appellant also submitted a statement from her supervisor, A. Berrios, in which he stated that appellant had reported to him that a co-worker had intentionally brushed up against her without her consent and that he had reported the allegation to his unit manager for review.

By decision dated January 9, 2003, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision.

The Board finds that the Office properly refused to reopen appellant's case for further review on the merits of his claim under 5 U.S.C. § 8128(a).

¹ Docket No. 01-2203 (issued June 4, 2002).

Under 20 C.F.R. § 10.606, a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law; by advancing a relevant legal argument not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.² Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.³

In this case, appellant has not shown that the Office erroneously applied or interpreted a specific point of law; she has not advanced a relevant legal argument not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. The evidence appellant submitted was either previously considered and rejected by the Office in prior decisions, or is not pertinent to the issue on appeal. The statement from Mr. Berrios merely reiterates that appellant made an allegation to him of an unconsented touching by a co-worker, which he passed on to upper management. As the Board found in its June 4, 2002 decision, however, the employing establishment responded to her allegations of sexual harassment by co-workers by calling a meeting of her work division in which another supervisor warned that such behavior would not be tolerated. Thus, Mr. Berrios' statement does not constitute new and pertinent evidence that these actions on the part of management constituted a compensable factor of employment.

With respect to the medical evidence submitted, the Board notes that its prior decision affirmed the Office's determination that appellant had not substantiated a compensable work factor. Only when a compensable work factor has been substantiated does the medical evidence become relevant as to whether appellant has established an employment-related emotional condition.⁴ The Board accordingly finds that Dr. Afield's reports are not new and relevant evidence with respect to the issue presented. Additionally, the letter from appellant's representative failed to show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. The Board finds that appellant did not meet any of the requirements of section 10.606(b)(2) and therefore the Office properly refused to reopen appellant's claim for a review on the merits.

² 20 C.F.R. § 10.607(b)(1). *See generally* 5 U.S.C. § 8128(a).

³ *Howard A. Williams*, 45 ECAB 853 (1994).

⁴ *See Parley A. Clement*, 48 ECAB 302 (1997).

The decision of the Office of Workers' Compensation Programs dated January 9, 2003 is hereby affirmed.

Dated, Washington, DC
August 4, 2003

Alec J. Koromilas
Chairman

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member